

SB61 – CLARIFYING THE COURT'S PUNITIVE AUTHORITY

REQUESTED AMENDMENTS*

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For Hearing on March 16, 2015, in House Judiciary Committee

* Requested amendments to current bill draft appear in highlighted bold type

Section 1. Section 46-8-101, MCA, is amended to read:

"46-8-101. Right to counsel. (1) (a) During the initial appearance before the court, every defendant must be informed of the right to have counsel and must be asked if the aid of counsel is desired.

(2)(b) Except as provided in subsection (3) (1)(c), if the defendant desires assigned counsel because of financial inability to retain private counsel and the offense charged is a felony or the offense is a misdemeanor and incarceration is a sentencing option if the defendant is convicted, the court shall order the office of state public defender, provided for in 47-1-201, to assign counsel to represent the defendant without unnecessary delay pending a determination of eligibility under the provisions of 47-1-111.

(3)(c) If the defendant desires assigned counsel because of financial inability to retain private counsel and the offense charged is a misdemeanor and incarceration is a sentencing option if the defendant is convicted, during the initial appearance the court may order that incarceration not be exercised as a sentencing option if the defendant is convicted. If the court so orders, the court shall inform the defendant that the assistance of counsel at public expense through the office of state public defender is not available and that time will be given to consult with an attorney before a plea is entered. If incarceration is waived as a sentencing option, a public defender may not be assigned.

(2) If incarceration was not a sentencing option for the original offense pursuant to subsection (1)(c), a defendant cited to show cause pursuant to 46-8-115 for nonpayment of costs of assigned counsel and [section 1] WITH CIVIL CONTEMPT PURSUANT TO TITLE 3, CHAPTER 1, PART 5, 3-10-401, OR 3-11-303 for default in payments of amounts imposed under 46-18-201(3) through (5) must be informed of the right to have counsel and must be asked if the aid of counsel is desired, if there is a possibility of incarceration upon a finding of contempt, except incarceration imposed for a contempt described in 3-1-501(1)(a) or (1)(b), or 3-1-520. If the defendant desires assigned counsel because of financial inability to retain private counsel, the court shall order the office of state public defender provided for in 47-1-

201 to assign counsel to represent the defendant without unnecessary delay pending a determination of eligibility under the provisions of 47-1-111."

Section 2. Section 47-1-104, MCA, is amended to read:

"47-1-104. Statewide system -- structure and scope of services -- assignment of counsel at public expense.

* * *

(4) A court may order an office to assign counsel under this chapter in the following cases:

(a) in cases in which a person is entitled to assistance of counsel at public expense because of financial inability to retain private counsel, subject to a determination of indigence pursuant to 47-1-111, as follows:

* * *

(xi) for a defendant cited to show cause pursuant to 46-8-115 and ~~section 1~~ OR CITED WITH CIVIL CONTEMPT PURSUANT TO TITLE 3, CHAPTER 1, PART 5, 3-10-401, OR 3-11-303 when incarceration was not a sentencing option for the original offense pursuant to 46-8-101(2); **and there is a possibility of incarceration upon a finding of contempt, except incarceration imposed for a contempt described in 3-1-501(1)(a) or (1)(b), or 3-1-520.**